SINGLE BENCH

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C F/1001

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W. P. No. /283 /2006

PETITIONER : Sunil Kumar Channe, age about 44 yr.
S/o Bhaurao Channe, Mess Servant
Government 100 Baded Hospital Korba,
Distt. Korba

P.R. No. 1336/06
Presented by Shri Vinod Doshmukh
dated 9/3/06

VERSUS

RESPONDENTS : 1. State of Chhattisgarh
Through :- Its Secretary
Ministry of Health, Mantralaya
D.K.S. Bhawan, Raipur (C.G.)

2. Chief Medical & Health Officer
Govt. Sardar Vallabh Bhai Patel
Memorial Hospital, Bilaspur (C.G.)

3. Assistant Medical Surgeon,
Government 100 Baded Hospital Korba,
Distt. Korba (C.G.)

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"WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA"

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(39)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1283 OF 2006

Petitioner : Sunil Kumar Channe

versus

Respondents : State of Chhattisgarh and others

Present : Mr. Vinod Deshmukh, counsel for the petitioner.
Mr. Arvind Dubey, Panel Lawyer for the State/respondents.

ORDER

(Passed on 18th Day of January, 2007)

By this petition, the petitioner impugns the order dated 24-7-1992 (Annexure P-8), whereunder the appointment of the petitioner was not permitted.

2. The indisputable facts, in nutshell, are that the petitioner was initially appointed as Mess-Servant at Collector's rate from Contingency Fund for a period of 89 days by order dated 27-1-1988 (Annexure P-1). Thereafter, the appointment of the petitioner on the post of Mess-Servant for 89 days at Collector's rate was changed and converted to appointment on regular basis by order dated 21-3-1988 (Annexure P-2). While working as Mess-Servant, according to the

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petitioner, he applied for fresh appointment on the post of Lower Division Clerk. The petitioner was appointed as Lower Division Clerk by the Chief Medical and Health Officer, Bilaspur vide order dated 10-7-1992 (Annexure P-7). The petitioner was declined joining at 100 Bed Hospital, Korba vide order dated 24-7-1992 (Annexure P-8).

3. Being aggrieved, the petitioner filed an application, being Original Application No.3143 of 1992, before Madhya Pradesh Administrative Tribunal. On dissolution of the State Administrative Tribunal, Original Application No.3143 of 1992 was transferred to High Court of Madhya Pradesh and numbered as Writ Petition No.7735 of 2003. The petitioner withdrew the said writ petition on 6-12-2005 with liberty to file a fresh petition before this Court. Accordingly, this petition is filed.

4. Learned counsel appearing for the petitioner would submit that the petitioner was appointed in accordance with law on the basis of proper selection and denial of joining is bad as the petitioner has acquired right to the post on being selected on the post of Lower Division Clerk. Learned counsel appearing for the petitioner would further contend that the petitioner was not afforded any opportunity of hearing before the impugned order was passed. He would further submit that the impugned order dated 24-7-1992 (Annexure P-8) be quashed and the petitioner be granted posting from the date of his selection by order dated 10-7-1992 (Annexure P-7).

5. Learned counsel appearing for the State/respondents would submit that the appointment of the petitioner was not in

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accordance with the rules as framed under the Proviso to Article 309 of the Constitution of India. The appointment of the petitioner is governed under the Madhya Pradesh Public Health and Family Welfare (Directorate of Health Services) Class III Ministerial Service Recruitment Rules, 1989 (henceforth 'the Rules, 1989'). The petitioner was not selected by a selection committee as prescribed under Rule 11 of the Rules, 1989. The appointment of the petitioner was done by respondent No.2 without following the proper procedure of law.

6. Having heard learned counsel appearing for the parties and having perused the pleadings and the records appended thereto, it is apparent that the appointment of the petitioner was not in accordance with law as there was no selection committee and a list of selected candidates was also not published. It appears that the appointment of the petitioner was lone appointment. Thus, the Assistant Civil Surgeon rightly declined to permit the petitioner joining the hospital at Korba.

7. On the basis of selection, even if, it is done in accordance with law, the petitioner cannot claim right to the post, as it is well settled in a catena of decisions of the Supreme Court.

8. In the case of ***Shankarsan Dash*** vs. ***Union of India***[1], it was held by the Supreme Court that "it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied".

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9. It was subsequently followed in ***Ludhiana Central Co-operative Bank Ltd.*** **vs.** ***Amrik Singh and others***[2], wherein it was held by the Supreme Court that "even otherwise, it is well settled by now that a person whose name is said to find place in a select panel has no vested right to get appointed to the post in spite of vacancies existing".

10. Further in ***Union of India and others*** **vs.** ***Kali Dass Batish and another***[3], the Supreme Court held that "mere inclusion of a candidate's name in the selection list gave him no right, and if there was no right, there could be no occasion to maintain a writ petition for enforcement of a non-existing right".

11. In the facts of the present case, even the appointment of the petitioner is not in accordance with law. Thus, the petitioner has no indefeasible right to the post of Lower Division Clerk and there is no scope of affording any opportunity of hearing when the petitioner has not acquired any right to the post.

12. As a result and for the reasons stated hereinabove, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (1991) 3 SCC 47
2 (2003) 10 SCC 136
3 (2006) 1 SCC 779

Gopal